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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1148

NEW WORLD LIFE INSURANCE COMPANY,
Petitioner,

vs.

GEORGIA INTERNATIONAL LIFE INSURANCE COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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The respondent, Georgia International Life Insurance Company ["Georgia International"] respectfully requests this Court to deny the petition of New World Life Insurance Company ["New World"] for writ of certiorari, seeking review of the opinion of the Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinions below are correctly set forth in the petition. [Pet. 17-26.]

JURISDICTION

The jurisdiction of this Court is accurately stated in the petition. [Pet. 1-2.]

QUESTIONS PRESENTED

(1) Whether the Court of Appeals for the Fifth Circuit and the District Court for the Northern District of Georgia were correct in holding that the regulation of the Commissioner of Insurance for the State of Florida contained in Bulletins 567 and 567A made certain reinsurance treaties illegal and excused their performance?

(2) Whether the Court of Appeals for the Fifth Circuit and the District Court for the Northern District of Georgia were correct in holding that New World's failure to challenge the regulation of the Commissioner of Insurance for the State of Florida contained in Bulletins 567 and 567A estopped New World from suing for breach of the reinsurance treaties?

(3) Whether the Court of Appeals for the Fifth Circuit and the District Court for the Northern District of Georgia were correct in holding that New World's course of conduct, including its admission to the Commissioner of Insurance for the State of Florida that it considered the reinsurance treaties terminated as of October, 1972, estopped New World from suing for breach of those treaties?

STATUTES INVOLVED

In addition to those statutes set forth in the petition [Pet. 3-5], the following statutes are relevant to the questions presented:

§626.901 of the Florida Statutes provides in part:

"(1) No person shall, from offices or by personnel or facilities located in this state, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact

such insurance in this state, or in any other state, in the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts or renewals thereof, the dissemination of information as to coverage or rates, the forwarding of applications, the delivery of policies or contracts, the inspection of risks, the fixing of rates, the investigation or adjustment of claims or losses, or the collection or forwarding of premiums or in any other manner represent or assist such an insurer in the transaction of insurance with respect to the subject of insurance resident, located, or to be performed in this state . . . ."

§626.902 of the Florida Statutes provides:

"(1) Any person who in this state represents or aids an unauthorized insurer in violation of §626.901 shall upon conviction thereof be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083."

§624.610 of the Florida Statutes, as it appeared at the time of the transactions at issue, provided in part:

"(1) An insurer may accept reinsurance only of such risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) An insurer may reinsure all or any part of any particular risk with an insurer *authorized to transact insurance in this state or approved or accepted by the department* for the purpose of such reinsurance. The department shall not so approve any proposed reinsurance which it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer, or which is in violation of §624.404(5) ('fronting company')." (Emphasis supplied.)

§624.610 of the Florida Statutes was amended effective June, 1974, to add the following sentence to subsection (1):

> "(1) . . . No insurer shall cede or retrocede credit life, credit disability, or both credit life and credit disability insurance covering a risk located or written in this state to any insurer not authorized to transact insurance in this state or approved or accepted by the department for the purpose of such reinsurance."

§624.404 of the Florida Statutes, as amended effective June, 1974, provides in part:

> "(5) No authorized insurer shall act as a fronting company for any unauthorized insurer. A 'fronting company' is an authorized insurer which by reinsurance or otherwise generally transfers to one or more unauthorized insurers substantially the entire risk of loss under substantially all of the insurance written by it in this state, or on one or more lines of insurance on all of the business produced through one or more agents or agencies, or on all of the business from a designated geographical territory . . ."

STATEMENT OF THE CASE

While Georgia International does not agree with or adopt the statement of the case presented in Petitioner's Brief, it sees no reason to burden this Court further with a detailed recitation of the transactions which gave rise to this lawsuit. Certain items were, however, omitted from Petitioner's statement which are crucial to the decisions of the courts below. This Court's attention is respectfully directed to the following facts:

(a) All policies which were the subject of the reinsurance treaties were written on Florida residents by a Florida agent.

(b) Petitioner-insurance company was created under Arizona law to circumvent commission limitations imposed by Florida law.

(c) Georgia International performed its obligations under the treaties, made cessions, and cooperated with New World in every way until issuance of the Commissioner's Bulletins made further performance impossible.

(d) The Commissioner clearly intended his directive to apply to the reinsurance treaties at issue here. The parties brought their reinsurance arrangements to the express attention of the Commissioner and asked that he approve them. He refused, saying that the treaties were prohibited by the terms of his Bulletins.

(e) Georgia International was authorized to and did transact substantial business in Florida. It was thus subject to the plenary authority of the Commissioner. New World, because of its low capitalization of $37,500, could not qualify to do business in Florida and never held a certificate of authority from that state.

(f) New World never challenged the legality or validity of the Commissioner's Bulletins, either in general or as it applied to New World; nor did it request Georgia International to do so.

(g) New World itself represented to the Commissioner in a letter written by its counsel that New World and Georgia International were exploring alternative arrangements made necessary because the Bulletins had "terminated" the reinsurance agreements between Georgia International and New World.

REASONS FOR DENYING THE WRIT

I. The decisions of the lower courts turned upon peculiar facts which have been thoroughly explored twice before.

New World asks this Court to make a third review of a case turning on peculiar facts, which have been given lengthy attention by two lower courts. This Court has ruled that such an investigation is not a task to be served by a grant of certiorari: "We do not grant certiorari to review evidence and discuss specific facts." *United States* v. *Johnson*, 268 U.S. 220, 227 (1925).

II. The issues involved are too narrow to warrant review by this Court.

The case before the Court actually presents only a single issue: whether an insurance company, operating in Florida and dependent upon the Commissioner's approval for its continued right to do business in that state, may be penalized for stopping performance of reinsurance treaties which the Commissioner had declared illegal. The question itself demonstrates that this case is wholly lacking in the overriding importance necessary to justify a grant of certiorari. Instead, the present case presents merely a business dispute between two insurance companies which turns on the administrative propriety of the Commissioner's interpretation of narrow Florida statutes.

Both courts below held that New World's claim was barred by two separate defenses, estoppel and illegality. *Either* defense standing alone would have been sufficient to prevent recovery. [Opinion of Judge Moye, Pet. at 23.] Even more importantly, as both lower courts recognized, New World's claim, if indeed it ever had one, is now stale

and untimely: its argument should have been addressed to the Department of Insurance at a time when a reversal or invalidation of a Commissioner's actions would have reinstated the contractual obligations of the parties.

The limited import of the issues raised in this matter is further demonstrated by the fact that Florida has subsequently passed legislation codifying the position of the Commissioner as to the capital requirements for the reinsurers. See Florida Statutes, §624.610, as amended; §624.404, as amended.

III. Nothing in the opinions of the lower courts is in conflict with prior holdings of this Court.

The holdings of the lower courts that the Florida Insurance Commissioner was presumptively justified in the issuance of his regulation does not conflict with the cases cited by Petitioner. The cases cited by New World in support of its argument that the Commissioner's regulation was impermissibly "extraterritorial," are clearly distinguishable. Both *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U.S. 77 (1938) and *State Board of Insurance* v. *Todd Shipyards Corp.*, 370 U.S. 451 (1962) differ from the case at bar in that they involved exclusionary taxes rather than protective regulation. This Court and the Courts of Appeals are in unanimous agreement that different standards govern analysis of the police power and the taxation power. Only a low threshold of state interest is necessary to justify an exercise of the police power, even where the exercise has repercussions beyond state borders. *Hoopeston Canning Co.* v. *Cullen*, 318 U.S. 313 (1943); *Travelers Health Ass'n* v. *Virginia*, 339 U.S. 643 (1950); *Alden's, Inc.* v. *Packell*, 524 F.2d 538 (3d Cir. 1975).

Just as the holdings below do not offend this Court's notion of substantive due process, neither do they endanger

this Court's interpretation of the McCarran-Ferguson Act. Indeed the cases relied on by New World address issues wholly unrelated to the present controversy. This Court in both *SEC* v. *National Securities, Inc.*, 393 U.S. 453 (1969) and *SEC* v. *Variable Annuity Life Insurance Co. of America*, 359 U.S. 65 (1959) dealt with attempted state regulation of the company-shareholder relationship and held only that the McCarran-Ferguson Act does not insulate state securities regulation from federal interference. Actions such as those of the Commissioner which are addressed to the fundamental interests of the policyholders are precisely the type of regulation the McCarran-Ferguson Act left to the states. *National Securities* at 460.

CONCLUSION

The findings of the District Court and the Court of Appeals are fair, well-reasoned and amply supported by the record and legal authority. Respondent Georgia International Life Insurance Company prays that the Petition for a Writ of Certiorari to the Court of Appeals for the Fifth Circuit be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles H. Kirbo, attorney for respondent Georgia International Life Insurance Corporation, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of February, 1979, I served three true copies of the foregoing Brief in Opposition upon the petitioner, by depositing in a United States mailbox true copies of said brief, with first class postage prepaid, correctly addressed to the following, as required by Supreme Court Rule 33:

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